IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

Bail Appl..No. 6062 of 2007()

CRIME NO.349/07 OF AREACODE POLICE STATION

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PETITIONERS/ACCUSED NOS 1 TO 4 AND 6 TO 12

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1. PRAKASHAN,S/O.CHATHAN,
AGED 26 YEARS, PILAKANDI HOUSE,
KAVANOOR, MALAPPURAM DISTRICT.

2. VASU,S/O.CHATHU,AGED 33 YEARS,
PILAKANDI HOUSE,
KAVANOOR, MALAPPURAM DISTRICT.

3. KANNAN @ KANNANKUTTY,S/O.CHELLI,
AGED 60 YEARS,PILAKANDI HOUSE,
KAVANOOR, MALAPPURAM DISTRICT.

4. RANJITH,S/O. KANNAN, AGED 19 YEARS,
PILAKANDI HOUSE, KAVANOOR, MALAPPURAM DISTRICT.

5. HARISASAN,S/O. CHATHAN,
AGED 31 YEARS,
PILAKANDI HOUSE, KAVANOOR, MALAPPURAM DISTRICT.

6. ANOOP,S/O.CHATHAN,AGED 19 YEARS,
PILAKANDI HOUSE, KAVANOOR, MALAPPURAM DISTRICT.

7. SATHEESH,S/O. KANNAN,AGED 15 YEARS,
PILAKANDI HOUSE, KAVANOOR, MALAPPURAM DISTRICT.

8. RAJESH,S/O.KEERAN,AGED 20 YEARS,
NARIKKODAN KUNNATH HOUSE,
KAVANOOR, MALAPPURAM DISTRICT.

9. SOMAN,S/O. NEELAKANDAN,AGED 21 YEARS,
PILAKANDI HOUSE,KAVANOOR, MALAPPURAM DISTRICT.

10. SUNDARAN,S/O. NEELAKANDAN,AGED 17 YEARS
PILAKANDI HOUSE,KAVANOOR, MALAPPURAM DISTRICT.
REPRESENTED BY HIS FATHER GUARDIAN, NEELAKANDAN.

11. NAVUTTY,S/O. CHELLI,AGED 62 YEARS,
PILAKANDI HOUSE,KAVANOOR, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENT/STATE:

STATE OF KERALA, REP. BY THE SUB INSPECTOR
OF POLICE, AREACODE POLICE STATION - THROUGH
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM, KOCHI -31.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 08/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6062 of 2007

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Dated this the 8th day of October, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 to 4 and 6 to 12. Accused 2 has subsequently been arrested. Accused No.5 was earlier arrested, submits the counsel. The petitioners face allegations for offences punishable, inter alia, under Sections 326 and 308 r/w. 149 I.P.C. There are three injured persons. They have suffered injuries, including fracture by one of them. Knives and sticks were allegedly used. Prior animosity is the alleged motive. The incident took place on 18.9.2007 at 9.30 p.m. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the allegations are totally false and incorrect. In fact the petitioners were not the aggressors, but were victims of aggression. The petitioners as well as the defacto complainant do all belong to one colony. There were disagreements relating to the detection of an Abkari crime from the said colony. The distillers and boot leggers enjoyed political patronage and support of a powerful political group. The police is

also closing their eyes to the activities of such group. It is they who attacked the petitioners. Consequently there was a free for all in the colony and injuries were suffered by the alleged victims. The petitioners are unnecessarily arrayed as accused. A7 and A10 are juveniles. It is prayed that directions under Section 438 Cr.P.C. may be issued in their favour.

3. The application is opposed by the learned Prosecutor. The available indications clearly suggest that the petitioners were all members of an unlawful assembly. They indulged in violence against the victims. The juvenile accused shall be dealt with in accordance with law. There are no features in this case, which would justify the invocation of the extra ordinary equitable discretion under section 438 Cr.P.C. in favour of the petitioners, submit the Prosecutor.

4. None of the petitioners had got himself admitted in any hospital admittedly, though it is stated at the Bar that they had suffered injuries. No counter allegation has been raised before the police and no counter case has also been registered. The fact remains that three persons had suffered injuries, including fracture by one of them. Dangerous weapons were used also.

5. Considering the totality of circumstances, I find merit in the opposition raised by the learned Prosecutor. I agree with the learned Prosecutor that this is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course. I may hasten to observe that it shall be open to the petitioners to produce the relevant materials to show that A7 and A10 are juveniles, whereupon the procedure prescribed under the Juvenile Justice Act will be invoked by the learned Magistrate/Police.

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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